

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 26TH DAY OF MAY 1998

BEFORE

THE HON'BLE MR JUSTICE A.J. SADASHIVA

WRIT PETITION NOS.28979, 28979A & 28980/1994

BETWEEN:

IN W.P.NO.28979/1994:

1. Veeranagouda,
S/o Basanagouda Patil,
Age: Major, Occ: Agriculture,
Resident of Rayanal,
Taluk: Hubli, Dist: Dharwar.
2. Mallanagouda,
S/o Basanagouda Patil, Major.
Occ: Agriculture,
resident of Rayanal, Tk: Hubli,
Dist: Dharwar.

IN W.P.NO.28979A/1994:

1. Rudragouda, adopted father
Shivanagouda patil,
age: Major, Occ: Agriculture,
Resident of Rayanal, Tk: Hubli.
Dist: Dharwar.

IN W.P.NO.28980/1994:

1. Channabasappa,
S/o Kallappa Dadappanavar,
age: Major, Occ: Agriculture,
R/o Rayanal, Tk: Hubli,
Dist: Dharward. ... PETITIONERS

[By Sri.Vigneswara S. Shastri, adv.for petitioners]

AND:

1. The State of Karnataka,
represented by its Secretary to
Government, Housing and Urban
Development Department,
M.S. Building, Bangalore-1.

2. The Hubli Dharwar Urban Development Authority, by its Commissioner, Swimming Pool Complex, Hubli, Dist: Dharwar.
3. The Spécial Land Acquisition Officer, Hubli-Dharwar Urban Development Authority, Swimming Pool Complex, Hubli, Dist: Dharwar. ... RESPONDENTS

[By Sri.Basavaprabhu S. Patil, Adv.for R2, Sri.K.H. Jagadish, HCGP for R1]

These Memorandum of Writ Petitions ^{are} filed under Articles 226 and 227 of the Constitution of India, praying to quash the Notification dated 16.3.92 passed by Respondent No.2 in No.HUDA/LAQ/CR.174/91-92 as per Annexure-D and Notification dated 6.12.93 passed by Respondent No.1 in No.HUD.392 MIB 93 as per Annexure-G in so far as land in Sy.No.95/1 measuring 3 acres 26 guntas, Sy.No.95/4 measuring 2 acres 19 guntas and Sy.No.81/2+3 measuring 7 acres 24 guntas out of 8 acres 24 guntas situated in Rayanal village of Hubli Taluk, Dist: Dharwar, surrendered by boundary stones belonging to the petitioners.

The petitions coming on for hearing this day, the court made the following order:

ORDER

Though there are 3 petitions only two numbers are given by the Office. Sl.No.28979/94 is given to two petitions. The second petition is therefore directed to be numbered as W.P.28979A/1994.

2. The notifications dated March 16, 1992 and December 6, 1993 issued by respondents 2 and 1 under Sections 17[3] and 19[1] respectively of the Karnataka Urban Development Authorities Act, 1987, herein after called "the Act", are sought to be

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quashed by the petitioners in these petitions, in so far as they relate to Sy.No.95/1, 95/4, 81/2+3 situated in Rayanal village of Hubli Taluk.

3. The aforesaid lands were acquired for Hubli Dharwar Urban Development Authority under the provisions of the Act for the execution of their scheme in relation to residential layout.

4. The petitioners sought for quashing the aforesaid notification on the following grounds; viz.,

[a] The declaration under sub-section [1] of Section 19 of the Act is invalid for having been issued after the expiry of one year from the date of publication of notification under sub-section [3] of section 17 of the Act;

[b] The declaration is vitiated for not having been preceded by an enquiry under Sec.5A of the Land Acquisition Act, 1894;

[c] The authority did not consider the objections of the petitioners before submitting the scheme to the Government for sanction;



[d] The entire land is a garden land and if acquired the petitioners would be deprived of their livelihood and the acquisition of the garden land is contrary to the guidelines issued by the Chief Minister; and


[e] the State Government did not apply its mind to accord sanction and the sanction is therefore violative of sub-section [3] of section 18 of the Act.

5. At the outset, the first two contentions does not deserve any consideration as they are available only in respect of acquisition under the provisions of the Land Acquisition Act, 1894. The provisions under the Act, viz., Sections 16, 17, 18 and 19 deals with the acquisition of land for the purpose of the schemes of the authority and for the purpose of acquisition they operate as a self-contained code. In view of there being no provision prescribing any period within which the declaration should be issued the first contention should fail. Similarly, the Act do not provide for any enquiry under Section 5A of the Act.

6. Sri.Basavaprabhu Patil, learned Counsel appearing for respondent Nos.2 and 3 on the basis of the parawise remarks has submitted that the

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objections of the petitioners have been considered and rejected. In this view of the matter, it is not possible to accept the contention of the petitioners that the authority has failed to consider the objections. Even otherwise from the tenor of the objections, I do not think that non-consideration of such objections would invalidate the acquisition proceedings as none of the objections are tenable and would constitute a real objection for acquisition of any portion of any land. From the scheme of the Act relating to acquisition of land it is not as if the petitioners would be deprived of their property without any compensation. The petitioners would be paid just and proper market value of the land in question and therefore it cannot be said that they would be deprived of their livelihood. Sub-sec.[3] of section 18 of the Act provides that the State Government by order should accord sanction to the scheme after considering the proposal. It does not say as to how it should be considered. When once the State Government accords sanction it is only after application of its mind. Even otherwise, the petitioners have not stated as to the source of their information in relation to the non-application of mind of the Government acting under sub-sec.[3] of Sec.18 of the Act. The petition is therefore untenable. It is also



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contended by Sri.Vigneshwara Shastry, learned Counsel appearing for the petitioners that the acquisition of the land of the petitioners in the face of availability of the Government land adjacent therein is unjust. To execute the scheme, it is needless to state that the development authority requires large extent of land. Even if the Government land is available it would not preclude the development authority from acquiring other lands situated adjacent to Government land to execute the scheme by the development authority.

7. For the reasons aforesaid, these petitions fail and accordingly dismissed.

8. In the circumstances of the case, there is no order as to costs.

9. Sri.K.H.Jagadish, learned HCGA is permitted to file memo of appearance for Respondent No.1 within four weeks.

Sd/-
JUDGE

sub.

